

2017 Annual Report of the Iowa Consumer Credit Code

The Attorney General is directed by Chapter 537 of the Iowa Code to administer the Iowa Consumer Credit Code (hereinafter “ICCC”). Since 1974, the Attorney General has delegated primary authority for the administration and enforcement of the ICCC to the Consumer Protection Division (hereinafter “CPD”). The head of the CPD is the Administrator of the ICCC and has traditionally appointed a Deputy Administrator to oversee the day-to-day duties of regulating and enforcing the ICCC. The current Administrator is Jessica Whitney, Director of the CPD. There is not a Deputy Administrator in place, but two Assistant Attorney Generals, Amy Licht and Max Miller, spend time on ICCC cases and issues.

The Administrator's responsibilities under the ICCC include resolving complaints, investigating serious complaints, formulating and carrying out litigation, drafting legal opinions, conducting consumer credit educational activities and programs, and monitoring the status of consumer credit in the state. The Administrator coordinates with other Iowa agencies, other states with versions of the Uniform Consumer Credit Code, and federal agencies with oversight of the consumer credit industry.

Iowa Code section 537.6104(5) directs the Administrator to report annually on the ICCC and the state agencies charged with administering the ICCC, as well as the general availability of credit. This report is broken down into sections that correspond with the reporting requirements of Iowa Code section 537.6104(5).

The contents of this report are compiled from the previous year’s report, with relevant information updated to reflect recent changes.

1. Consumer Complaints

Iowa Code section 537.6104 allows the Administrator of the ICCC to handle consumer complaints and encourage voluntary compliance with Code requirements. The Administrator engages in a conscious effort to combine those two responsibilities. When handling consumer complaints, the Administrator generally seeks voluntary compliance first and takes legal action second or as needed.

The processing, assignment, and handling of ICCC complaints are a part of the daily activity of the CPD. The CPD received approximately 2,960 written consumer complaints during the 2017 calendar year, an increase of 5% from 2016. Of those complaints, at least 540 were filed directly pursuant to the ICCC. Though complaints whose main focus was credit concerned about 19% of the total received by the CPD, hundreds of other complaints also involved credit although not classified as such, like complaints about home improvements, new car buying, and the financing of cell phones.

Complaints concerning credit ranked highly in the top categories of consumer complaints and should continue to be regarded as an area of major concern. The credit complaints break down as follows, with their rank in relation to other categories of complaints:

4. Payday loans	127
5. Motor Vehicle Credit/Collection	122
8. Debt Collection	103
10. Used Auto Sales Practices (includes credit)	100
11. Home Mortgages	99

For all complaints, many of the inquiries handled by the CPD can be resolved by explaining the applicable provisions of the ICCC to those involved in the complaint. Other times, the office must first investigate the complaint and determine the facts in order to outline to the parties how the law applies to their situation. The CPD strives to resolve the complaints in a manner that makes the consumer whole, where appropriate.

Complaints regarding home improvements and imposter scams topped the list of complaints this year. Payday loans, motor vehicle credit/collection, and debt collection also appeared in the top ten. Once again, used car financing was an area the office focused on this year. Continued effort was spent on dealer education, complaint resolution, and enforcement actions. The CPD has two investigators that work motor vehicle complaints, both trained in the area of consumer credit. In addition, the CPD staff works closely with the Department of Transportation to resolve complaints and monitor the industry. As the primary regulator of traditional “Buy Here, Pay Here,” dealers the office looks closely at individual creditors. In 2017 the office entered into three Assurances of Discontinuance with “Buy Here, Pay Here,” dealers. The three cases all arose from the investigation of complaints.

In general, Subprime auto finance continues to be an area of concern. In addition to traditional “Buy Here, Pay Here,” dealers, the securitization of subprime retail installment contracts has resulted in increases in the number of auto finance complaints and ICCC violations. The CPD is looking closely at this area and pursuing potential multistate action.

Debt collection practices held steady at number eight. The CPD's policy toward debt collection complaints is to resolve them at the administrative level, obtain redress for any aggrieved consumers, and stop any problematic practices. Article 7 of the ICCC sets forth with impressive thoroughness exactly what debt collection techniques, practices, and procedures are prohibited. Most debt collection complaints are filed by consumers aggrieved by what they believe is an unlawful debt collecting practice. Generally, the CPD resolves the problem through an informal agreement with the lender or debt collector. When the ICCC is clearly violated, the CPD requires not only redress for the aggrieved consumer but the Administrator may seek and obtain an Assurance of Discontinuance pursuant to Iowa Code section 537.6109 where the creditor or collector clearly states that they have been notified as to what is wrong with their practice in question and that they are agreeing to discontinue it. In some instances, the creditor or collector is able to demonstrate either that there has been no violation of the ICCC or that any violation was unintentional and the creditor or collector intends to comply with the statute.

When informal resolution of debt collection complaints is insufficient, the CPD engages in enforcement actions to ensure Iowa lenders and debt collection agencies keep their practices in compliance with the ICCC. Members of the CPD also consult with other states regarding debt collection and frequently participate in multistate efforts to investigate larger debt collection companies.

Additionally, the CPD continues to receive a number of complaints based upon problems arising from home mortgages, both the origination and servicing of mortgage loans. The CPD continues to be involved in multistate investigations involving mortgage servicing. We also receive many complaints involving mortgage foreclosure rescue scams. The CPD handles these complaints on an individual basis. The CPD has also been involved in multistate and federal efforts to attempt to track down these often temporary companies.

In addition to the formal written complaints the CPD receives, the day-to-day work of the attorneys and investigators assigned to ICCC inquiries, complaints, and investigations often involves interacting with the borrowing public, credit industry representatives, attorneys, and representatives of other state agencies about compliance with the ICCC. Iowa Code section 537.6104(1)(d) requires the Administrator to counsel persons and groups on their ICCC rights and duties. The day-to-day activities in administering the ICCC involve numerous emails, telephone calls, letters, informal interpretations, responses, and resolutions between the CPD staff office and the various parties outlined above. In addition to advice given via phone and email, the CPD also issues what are called informal advisory opinions, which are written responses to questions concerning credit and/or the interpretation of the ICCC. In 2016, the office did not publish an informal advisory. As always, the office responded to numerous phone and email requests concerning the interpretation of the ICCC.

2. Credit Education

The ICCC also requires that the Administrator establish educational programs on credit practices and problems. *See* Iowa Code § 537.6104(1)(e). With limited staff to devote to ICCC matters, the CPD has made education for consumers, the lending industry, and members of the Bar a top priority.

Once again CPD staff members made a number of presentations to large groups concerning state and federal consumer credit laws. Attorney General Miller himself joined an April 25th AARP live-stream event on consumer fraud viewed by 6,200 people. Throughout the year CPD staff members joined the Iowa Insurance Division as part of Fraud Fighters, a traveling fraud awareness program attended by 805 Iowans in 2017. Fraud Fighters gave five presentations regarding all types of fraud, including consumer credit, in Ames, Fort Dodge, Altoona, Stratford, and Webster. Our office also joined Representative David Young's July Fraud Forum in Creston to raise awareness of current consumer frauds. In March, Administrator Jessica Whitney spoke about consumer fraud with a focus on credit and investment fraud at a meeting of the Association of Certified Fraud Examiners Des Moines Chapter #118. In October, she gave a presentation at the National Association of Attorneys General Consumer Protection Seminar on for profit colleges and student loan fraud. Administrator Whitney also spoke at the Federal Trade

Commission panel on diverse communities held in Des Moines. Her focus was on consumer fraud in general, but she spent a portion of her talk devoted to the Consumer Credit Code. She also gave a presentation at Grinnell College on fraud prevention. In November, investigator Al Perales delivered a presentation at an event in East Des Moines called Cafecito con la policia (Coffee with the police) which involved outreach to the Latino community in Des Moines. In addition he gave multiple presentations to retirement homes throughout Iowa. Lastly, Assistant Attorney General Ben Bellus gave a radio interview with KIIC 96.7 radio in Albia, Iowa on the issue of timeshare sales.

The CPD also travels around the state of Iowa with a mobile office to tackle consumer fraud of all kinds. The locations visited by the mobile unit in 2017 include Oskaloosa, Newton, Harlan, Atlantic, Algona, Charles City, Waverly, Mt. Pleasant, and Fairfield. The CPD also participates in a variety of less formal consumer-oriented conferences, seminars, meetings, and speaking presentations, including presentations to graduate level college classes, law school classes, high school classes, and senior citizens' groups. The attorneys and investigators of the CPD speak around the state on the general topic of consumer fraud and protection in Iowa. Though these presentations deal more generally with the overall work of the CPD, they also discuss the basic provisions of the ICCC and often respond to specific ICCC questions from audience members. The CPD also assists with an "Attorney General Booth" each year at the Iowa State Fair, staffed by employees from throughout the Attorney General's office. Many of the questions from consumers visiting the booth pertain to consumer credit, and many of the educational materials offered to the public through the booth seek to inform consumers about the ICCC and its consumer credit protections.

The Division has also provided guidance and education in the field of motor vehicle financing. The staff has given advice on continuing education courses for motor vehicle dealers, focusing on motor vehicle finance. The staff also routinely answers questions from motor vehicle trade groups and many of those questions are finance-related. Throughout 2017, a video presentation featuring Administrator Jessica Whitney was shown as part of the training of Iowa used motor vehicle dealers pursuant to the requirements of Iowa Code section 322.7A. Consumer credit issues were interwoven throughout the presentation.

In monthly publications entitled "Consumer Focus" the CPD reaches tens of thousands of Iowans. The "Consumer Focus," are bulletins that provide tips and information to consumers on relevant consumer issues. During 2017 topics addressed in these bulletins included tax refund loans, Facebook scams, and online buying/payment methods. The bulletins are sent statewide to over 3,000 groups and communities and are free to reprint and redistribute. They are also available on the Attorney General's website.

In addition, to public speaking, meetings, and publications, staff members also have informal discussions and meetings with industry and affected individuals. It is not uncommon for representatives of various businesses or members of the credit industry to come into the CPD office with their attorneys to ascertain what they must do to comply with the ICCC. Staff members regularly respond to questions posed by other state agencies, as well. The many ICCC-related questions posed to staff members during these public contacts shows that there is still a great deal of confusion about the law, and that the educational campaign needs to be continued.

3. Developments in Iowa Consumer Credit Law

In 2017, there was on Iowa Court of Appeal which interpreted the ICCC.

In *Mitchell County Mutual Agency, Inc. v. Ginther*, No. 16-1857, 2017 WL 4570534, at *1 (Iowa Ct. App. Oct. 11, 2017), the Court of Appeals heard and affirmed an appeal from the district court's ruling in a breach-of-contract action. Plaintiff merged with a company in 2004 that had provided insurance to defendant since 1999, and plaintiff continued to provide insurance to defendant, relying on a billing practice wherein defendant would write a check once or twice a year. *Id.* Plaintiff sued defendant in response to defendant's 2014 stopping of payment on a check for insurance policies and cancelling the policies, alleging that this constituted a breach of contract. *Id.* The district court found "a contractual obligation for the coverage provided by [plaintiff] and the amounts billed for it," and ruled in plaintiff's favor. *Id.* at *1–2.

Of particular interest, defendant contended that plaintiff's "billing practice constituted a violation of the [ICCC] and . . . is not binding upon him personally." *Id.* at *2. Defendant asserted that he did not know what insurance coverage was being purchased for his family's farm, that he did not "accept[] the insurance policy or the price charged," that he did not "receive[] a bill from [plaintiff] until after his father died," that he "never wrote a check out of his personal accounts or paid any consideration to [plaintiff] until after his father died and he inherited land," and that there was no "account or loan agreement which created a contractual obligation on the part of [defendant] to pay decedent's farm insurance." *Id.* Defendant essentially claimed that the "failure to timely pay insurance premiums ripens into a loan agreement regulated by Iowa Code § 537.3207," and that this resulted in an ICCC violation. *Id.* at *3. However, the Court of Appeals rejected this argument and ruled for plaintiff. *See id.*

Thus, *Ginther* instructs that the billing practice on display in this case does not constitute an ICCC violation. This is especially important as "delays in past payments [occurred] between the parties," but these delays did not create an ICCC violation where one otherwise would not have existed. *See id.*

4. Agency Reports on Consumer Credit

Two state regulatory units are charged by Iowa Code § 537.6105 with enforcing the ICCC with respect to the lending institutions they license and regulate: the Iowa Division of Banking and the Iowa Division of Credit Unions. Throughout the year the Administrator has frequent contact with these agencies regarding interpretation and enforcement of credit code provisions and changes in the consumer credit industry. The Administrator and the agencies work together on legislative issues and enforcement actions. The Administrator notifies a regulatory agency when the CPD receives a complaint involving one of the agencies' licensees. Likewise, the agencies alert the Administrator of serious violations that come to their attention. The Agencies work together with the Administrator whenever appropriate.

Each agency examines its licensees for ICCC compliance during the agency's regular, periodic examinations. The Credit Union Division, overseeing the state's 90 credit unions,

examines each credit union every twelve to fourteen months. The Credit Union Division received zero ICCC-related complaint in 2017. The Banking Division oversees licensing for 275 state-chartered banks and 840 loan companies, including delayed deposit locations, mortgage bankers, industrial lenders, and regulated lenders. State-chartered banks are examined every 12 to 18 months, alternating with the federal regulator. The various loan companies are examined every 12 to 24 months depending on the type of company. Delayed deposit companies, industrial lenders, and regulated lenders are examined annually. Mortgage bankers, nonresident industrial lenders, and nonresident regulated lenders are examined every 24 months. In 2017, the Banking Division received 13 complaints relating to the ICCC, 8 involving rates charged by unlicensed lenders.

5. Consultation With Other Jurisdictions

The CPD benefits from the experience and knowledge of credit code administrators in other states by participating in the American Conference of Uniform Consumer Credit Code States (ACUCCCS) every year. The conference is an excellent forum at which to discuss common problems in UCCC administration and collectively work toward fair resolution. The meetings enable each state to keep its administration of its consumer credit code in harmony with other jurisdictions as required by section 537.6104 of the Iowa Code.

The 2017 ACUCCCS meeting was held in Salt Lake City, Utah. All credit code states, except Oklahoma, attended the meeting. The Iowa Administrator served as Vice President of ACUCCS. The hottest topic for discussion was the Office of the Comptroller of the Currency's FinTech (financial technology) charter. Last year it was discussed as a possibility, this year more of a reality. Members again expressed concerns about the impact on state-chartered lending and the potential for large-scale preemption of state law by businesses traditionally regulated by states. Loans or consumer credit sales disguised as leases appear to be a growing phenomenon. Discussion was had about the different types of putative leases including companies leasing services like auto repairs. Internet lending in general was a popular topic for discussion. In particular, internet lending controlled or facilitated behind the scenes by state banks or Native American Tribes. The states updated each other on the ongoing litigation involving the legality of this type of lending and discussed the possibility of the organization doing an amicus brief in a particular Colorado case. Other important topics concerned crypto currency's lending impact, private student loans, the reemergence of peer-to-peer lending, subprime auto lending, mortgage servicing, and high interest small installment lending. States again shared updates regarding their various experiences working together in large multistate groups as well as with the federal Consumer Financial Protection Bureau. And, as always, discussion on legislative changes to each state's statute was held.

The ACUCCCS states also keep in regular contact via an email listserve and a biannual call. The listserve and call provide an excellent opportunity for discussion of potential changes in the law regarding consumer credit and the states' interpretation of portions of the ICCC.

6. Availability of Consumer Credit

By keeping in frequent contact and exchanging information with other state consumer credit administrators throughout the year, the CPD has been able to keep abreast of trends in the nationwide consumer credit industry. Unfortunately, we have been unable to compile information regarding the availability of credit to Iowa consumers due to the high cost of such data gathering and lack of any current data gathering system. However, the Consumer Financial Protection Bureau has compiled such data. In comparing April 2017 with April 2018, Iowa consumers have opened 20% fewer credit cards, 4% more auto loans, 74% more mortgages, and 152% more student loans.

Based on CPD's contacts with consumers, businesses, and the industry, as well as other state agencies, we are able to assess the availability of credit anecdotally. Currently, credit is widely available to almost all Iowa consumers. However, the quality of the credit that may be available to some is suspect. Thanks to the proliferation of direct deposit services (also known as payday loans) and hard-to-police internet loans, much of the credit available to some consumers is only available at a very high cost. Higher interest open-end credit, in the form of credit cards, also appears to be widely available. With a strong housing market and fairly low interest rate, home mortgages, also appear easily obtainable to consumers with decent credit scores. Additionally, student loan debt continues to rise, and is of a real concern in the future as the debt becomes due and is particularly difficult to discharge in bankruptcy. Subprime auto financing continues to be a concern with many auto loans now being packaged and sold as securities. There is a fear that subprime auto loans might follow the same path that subprime mortgages did and lead to more global issues.

7. Changes to the ICCC

Finally, the Office of the Attorney General reviews the ICCC to suggest to the legislature amendments and improvements. In 2017 the Iowa legislature passed two amendments to the Consumer Credit Code Chapter 537. Senate File 502 amended the ICCC in several ways. First, it added new subsection 3 to Iowa Code § 537.2301. It reads:

A supervised loan made by a person in violation of subsection 2 shall be void and the consumer is not obligated to pay either the amount financed or the finance charge. If the consumer has paid any part of the amount financed or the finance charge, the consumer has a right to recover the payment from the person in violation of subsection 2 or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

Iowa Code § 537.2301(3). This additional subsection clarifies the rights of Iowa consumers to

relief when they borrow from an unlicensed creditor. Additionally, Senate File 502 amends Iowa Code § 537.2501(1)(f)(1). It states that parties to an open-end credit agreement may contract for over-limit charges pursuant to 12 C.F.R. §1026.52(b) rather than “up to 5 dollars.” This change aligns the Iowa code with federal standards. Senate File 502 also amends I.C.A. § 537.2501(1)(g) to remove detailed language limiting surcharges and replaces it with the surcharge limit promulgated in Iowa Code § 554.3512 for a “dishonored check, draft, or order that was accepted as payment for a consumer credit transaction payment.” This change allows dishonored check fees to be charged in all consumer credit transactions. Senate File 502 further adds to the list of additional charges under Iowa Code § 537.2501(1) by adding subsection (k) which permits the assessment of fees for credit reporting. Senate File 502 also amends I.C.A. § 537.2502 increases the maximum allowable amount of a delinquency charge from \$15 to \$30. Senate File 502 adds a new subsection 8 to Iowa Code § 537.2510. It specifies that the section, which mandates the rebate of prepaid finance charges, does not apply to a financial institution as defined in Iowa Code §537.1301.

Lastly, Senate File 502 updates the monetary damages and fees that can be assessed. The Administrator appreciates the increase in fees and penalties in the ICCC since they had not increased since the passage of the ICCC in 1976. It amends Iowa Code § 537.5201 to increase the damages a consumer can recover for overcharging from not less than \$100 or more than \$1,000 to not less than \$200 or more than \$2,000. Senate File 502 also amends Iowa Code § 537.5203 increases the civil liability of creditors for a failure to disclose information from not less than \$100 or more than \$1,000 to not less than \$200 or more than \$2,000. Senate File 502 amends Iowa Code § 537.6113(2) to increase the maximum civil penalty an administrator may recover from a person for repeated and intentional violations from \$5,000 to \$10,000. Senate File 502 also amends Iowa Code § 537.6203 (1) and (4) to increase the annual fee an administrator may collect from \$10 to \$50 and increases the fee an administrator may collect from a person who fails to pay their annual fee from \$25 to \$75.

The other piece of legislation that dealt with the ICCC was Senate File 503. It amends Iowa Code § 537.2503(1) by adding subsection (b) which reads:

With respect to an interest-bearing consumer credit transaction not pursuant to an open-end credit arrangement and other than a consumer lease or consumer rental purchase agreement, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid installments in addition to any interest accrued pursuant to the terms of the consumer credit transaction. The creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge which shall not exceed thirty dollars per deferred installment.

I.C.A § 537.2503(1)(b). This provision increases allows creditors to assess a deferral fee on interest bearing transactions.